**BEFORE THE TAX COMMISSION OF THE STATE OF IDAHO**

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| In the Matter of the Protest of | ) | |
| | ) | DOCKET NO. 18037 |
| [Redacted], | ) | |
| | ) | DECISION |
| Petitioner. | ) | |
| | ) | |

On January 30, 2004, the staff of the Income Tax Audit Bureau of the Idaho State Tax Commission issued a Notice of Deficiency Determination to [Redacted] (taxpayer), proposing income tax and interest for the taxable years 2000 through 2002 in the total amount of $12,540.

On March 17, 2004, the taxpayer filed a timely appeal and petition for redetermination. The taxpayer did not request a hearing and stated he had no further documentation to provide. The Tax Commission, having reviewed the file, hereby issues its decision.

The Income Tax Audit Bureau (Bureau) selected the taxpayer's 2000, 2001 and 2002 Idaho individual income tax returns for examination. The issues of concern to the Bureau were unreported 1099 income, pass-through income, a subtraction of capital gain income, and a retirement benefits deduction. The Bureau contacted the taxpayer and requested specific information. The taxpayer provided the information requested. The Bureau reviewed the information and made adjustments to the taxpayer's returns. The Bureau sent the taxpayer a Notice of Deficiency Determination, which the taxpayer protested.

The Bureau referred the matter for administrative review and the Tax Commission sent the taxpayer a letter giving him two alternative methods for having the Notice of Deficiency Determination redetermined. The taxpayer stated he would be willing to meet with the Commission, but he had no further documentation to provide.

The Bureau adjusted the taxpayer's 2000, 2001, and 2002 returns for unreported 1099 income. The income was from various racetracks in the east. The 1099 statements listed the taxpayer as the recipient. The 1099s generally also had some reference to [Redacted]. The taxpayer contested the inclusion of this income. He stated the income was [Redacted]'s income and was reported on [Redacted]'s corporate income tax return. The taxpayer stated that [Redacted] used his license/registration as a [Redacted] in the various states rather than going through the licensing process itself. Therefore, his name appeared on the 1099s as being the recipient of the income. In addition to the income belonging to [Redacted], the taxpayer stated there were fees and expenses associated with the income from the racetracks. He stated most of those expenses were provided to the Bureau and any checks that were directed to him were transferred immediately to [Redacted]

The Tax Commission reviewed the information and reviewed the corporate filings for [Redacted]. The Tax Commission was unable to identify the income because [Redacted] is a wholly owned subsidiary and it filed a combined return with its parent corporation. In order to verify the taxpayer's statements, the Tax Commission requested information from [Redacted]'s parent corporation, [Redacted]). [Redacted] response supported the taxpayer's statements. [Redacted] stated that the taxpayer served as the Secretary of [Redacted], to meet the two officers-requirement of incorporating in Idaho. The taxpayer was not on the payroll, and he is not a stockholder. The taxpayer's registration with various states' racing agencies was used by [Redacted]. [Redacted] stated all the income from the various tracks was included in its income.

Considering the information from [Redacted] the Tax Commission determined the substance of the income from the racetracks was that the income was [Redacted]'s income and not the taxpayer's. Therefore, the Tax Commission reversed the adjustment that includes the 1099 income from the racetracks in the taxpayer's taxable income.

The next adjustment the Bureau made was for pass-through income that was omitted on the taxpayer's 2000 return and netted to zero on the taxpayer's 2001 return. The taxpayer's original protest did not address this adjustment. Furthermore, when the Tax Commission sought confirmation on the issues contested, the taxpayer stated that the pass-through income was passive income that was offset by previous passive losses. However, he said he was willing to waive his complaint on this adjustment.

The Tax Commission is not clear as to the taxpayer's meaning that the passive income was offset by previous passive losses. Nevertheless, the schedules K-1 that the taxpayer received showed that the taxpayer had pass-through ordinary income from a limited partnership. As pass-through income, it is reported on the taxpayer's income tax return. Therefore, the Tax Commission upholds the Bureau's adjustment for the pass-through income.

In addition to the Bureau's adjustment for pass-through income, the Tax Commission found that the taxpayer did not include pass-through income on his 2002 return from the same partnership, [Redacted]. Therefore, the Tax Commission added this pass-through income to the taxpayer's 2002 taxable income.

On the taxpayer's 2001 return, the taxpayer claimed a subtraction for capital gains earned in [Redacted]. The Bureau disallowed this subtraction because, as an Idaho resident, the taxpayer is required to report his income from all sources to Idaho. (Idaho Code section 63-3002) The taxpayer did not initially protest this adjustment and, in the Tax Commission's follow-up letter, the taxpayer stated he was willing to waive the issue of [Redacted] capital gains. However, the taxpayer did say that the income should be capital gain not regular income.

Again, the Tax Commission is not clear on what the taxpayer's position was on the claimed subtraction. However, if the taxpayer was claiming the Idaho capital gains deduction, it is apparent from the information available that the property sold did not qualify for the Idaho capital gains deduction. Idaho Code section 63-3022H states, among other qualifications, that the property has to be located in Idaho at the date of sale for it to qualify for the Idaho capital gains deduction. The information available shows the property sold was apparently located in [Redacted]. Therefore, it does not qualify for the Idaho capital gains deduction.

The taxpayer apparently has a concern that the capital gain retain its character as capital gain income rather than as ordinary income. The taxpayer does not have to be concerned. The character of the income remains capital regardless of the adjustment made by the Bureau. The income is capital gain income for both federal and state income tax purposes.

The Bureau adjusted the taxpayer's 2002 return for the retirement benefits deduction he claimed. The Bureau disallowed the deduction because the taxpayer did not qualify for the deduction. Idaho Code section 63-3022A provides for a deduction of certain retirement benefits. To qualify, the individual receiving the retirement benefits must be age 65 or older, or age 62 and classified as disabled. In addition, the retirement benefits must be paid by the United States of America to a retired civil service employee; by the firemen's retirement fund of the state of Idaho to a retired fireman; by the policemen's retirement fund of a city within Idaho to a retired policeman; or by the United States of America to a retired member of the military services of the United States. The taxpayer's retirement benefits were not from any of these sources.

The taxpayer stated he did not see anything wrong with his analysis of the retirement benefits deduction he completed on Idaho form 39R. However, in looking at the taxpayer's analysis, the Tax Commission found that the taxpayer reported nothing or zero for the entry of qualified retirement benefits included in federal income. He was then supposed to enter the smaller of the qualified retirement benefits included in federal income or his social security benefits less the maximum retirement benefits under the social security act. Since the taxpayer had zero qualified retirement benefits included in federal income, he should have shown zero or no retirement benefits deduction. Therefore, the Tax Commission upholds the Bureau's adjustment for retirement benefits deduction.

The Bureau added interest to the taxpayer's tax deficiency for each of the years. The Tax Commission reviewed the addition and found it in accordance with Idaho Code section 63-3045.

WHEREFORE, the Notice of Deficiency Determination dated January 30, 2004, is hereby MODIFIED, in accordance with the provisions of this decision and, as so modified, is APPROVED, AFFIRMED, and MADE FINAL.

IT IS ORDERED and THIS DOES ORDER that the taxpayer pay the following tax and interest:

| YEAR | TAX | INTEREST | TOTAL |
|---|---|---|---|
| 2000 | $1,376 | $ 353 | $1,729 |
| 2001 | 2,367 | 425 | 2,792 |
| 2002 | 1,466 | 169 | 1,635 |
| | | TOTAL DUE | $6,156 |

DEMAND for immediate payment of the foregoing amount is hereby made and given.

An explanation of the taxpayer’s right to appeal this decision is included with this decision.

DATED this ____ day of ____________________, 2005.

IDAHO STATE TAX COMMISSION

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COMMISSIONER

**CERTIFICATE OF SERVICE**

I hereby certify that on this ____ day of __________________, 2005, a copy of the within and foregoing DECISION was served by sending the same by United States mail, postage prepaid, in an envelope addressed to:

[Redacted]
[Redacted]
[Redacted]

Receipt No.

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